IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 2701 OF 2004

Maqbool Rahimullah Khan. .. Petitioner

Vs.

Shri Amitabh Gupta & Ors. .. Respondents

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Shri Amin H.Solkar for the Petitioner.

Shri B.H.Mehta, APP for the Respondents.

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CORAM : R.M.S.KHANDEPARKAR &
P.V.KAKADE, JJ.

DATED : 4th February, 2005.

P.C.

1. Heard. The order of externment is sought to be challenged on two grounds. Firstly that the concerned authority, on the analysis of the materials before it, could not arrive at the finding regarding satisfaction about the fear in the mind of the witness regarding safety to that person or the property which is pre-requisite for an order in terms of the provisions of law comprised under Section 56(1) of the Bombay Police Act, 1951, and in that regard, reliance

is placed on the decision of Division Bench of this Court in **Ram Narayan Patio v. The State of Maharashtra and Ors.,** reported in 1987(1) Bom.C.R.471. Secondly, the authority, who had passed the order of externment, had taken over the charge only the day before the order passed, and no opportunity was given of being heard by the said incumbent of the office to the petitioner before the order was passed, and to that extent, there was violation of the principles of natural justice, more particularly considering the provisions of Section 59 of the Bombay Police Act, 1951.

2. As regards the first ground of challenge, undoubtedly, the provisions of law comprised under Section 56(1)(b) of the Bombay Police Act requires opinion to be formed by the officer regarding unwillingness of the witnesses to come forward to give evidence in public against the person sought to be externed by reason of apprehension on their part as regards the safety of their person or property. Bare reading of the impugned order passed by the lower authority apparently discloses a clear reference to the apprehension in the mind of the people who were affected on account of the alleged illegal criminal activities on the part of the petitioner, and on that

count, they were afraid of coming forward to lodge complaint and to disclose the facts to the police and only on the assurance being given about non-disclosure of their identity that they came forward to disclose about the alleged criminal activities on the part of the petitioner. Considering the same, the contention about failure on the part of the authority to arrive at the satisfaction as required under Section 56(1)(b) of the Bombay Police Act is to be rejected as devoid of substance.

3. The decision of the Division Bench in **Ram Narayan Patil's case (supra)** has absolutely no application to the case in hand. It was passed in the peculiar facts of the case wherein the authority had sought to clamp externment order against the petitioner therein on the basis of the criminal cases instituted against him wherein the names of the witnesses were clearly disclosed in the charge sheet filed by the police. Apparently, it was not the case where the people were afraid of coming forward to give evidence against the person sought to be externed. Being so, it was apparent that the authority had not applied its mind and arrived at the conclusion about the fear in the mind of the witnesses to come forward to depose against the persons sought to be externed in

a most cavalier and arbitrary manner.

4. As regards the second ground of challenge, it is now well settled that the question of personal hearing does not arise unless there is specific provision in that regard in the relevant statute. Nodoubt, the order of externment would bring civil consequences, and therefore, the basic principles of natural justice are required to be complied with and indeed the Legislature has taken due care in that regard by making necessary provision in Section 59 of the Bombay Police Act. The said provision clearly provides that the person against whom the order is to be passed should be given opportunity to putforth his say and such a person is entitled to file written statement in the case and can produce the evidence that he wants to produce in his defence. The officer, who was supposed to take decision regarding the notice issued against him prior to the date on which the order was passed, undoubtedly, was of the rank of Deputy Superintendent of Police. Undisputedly, all the materials placed against the petitioner were available before such officer before passing the order. Merely because such officer had not heard the petitioner personally, that itself cannot be a justification to hold that there was violation of the

principles of natural justice or that the provisions of Section 59 were not complied with. Besides, it is a matter of record that the petitioner preferred an appeal against such order and wherein, the petitioner was duly heard. In other words, the petitioner had sufficient opportunity of bringing all the facts to the notice of the concerned authority before confirming the order passed by the lower authority. It is not the case of the petitioner that any of the materials placed on record by the petitioner had been ignored by the authority, and on that count, the impugned order is vitiated. Once the statutory provisions relating to the procedure for hearing the petitioner has been complied with by the authority before passing the order, merely because the concerned authority took expeditious step to dispose of the matter, that itself cannot lead to the conclusion about the failure on the part of the authority to comply with the basic principles of natural justice. On the contrary, prompt steps by the officer deserves appreciation.

5. For the reasons stated above, therefore, there is no case for interference in the impugned order. The petition is therefore rejected.

(R.M.S.Khandeparkar, J)

(P.V.Kakade, J)

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